

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID SCOTT KOVEN SR., and
ROXANNE DIANE KOVEN,

Plaintiffs,

V.

TODD HAMMOND, Plattsmouth
Police Officer, LEROY LEWIS,
Plattsmouth Police Officer, DAVID
MURDOCH, Plattsmouth Police
Chief, ROBERT SORENSON,
Plattsmouth Police Officer, ANDREW
KENAN, Plattsmouth Police
Detective, DAVID WALKER,
Plattsmouth Police Detective, and
CITY OF PLATTSMOUTH, The,
Nebraska,

Defendants.

8:10CV373

ORDER

This matter is before the court on Defendants' Motion to Compel or, in the Alternative, to Dismiss ([filing 23](#)) and Defendants' Motion for Enlargement of Time ([filing 25](#)) to file motions for summary judgment based on qualified immunity. Both of Defendants' motions will be granted.

On or about April 8, 2011, Defendants served Interrogatories and a Request for Production of Documents on Plaintiffs. ([Filing 24](#).) Although responses to the discovery requests were due on May 9, 2011, they were not provided to Defendants. Upon inquiry into the tardy responses, Plaintiffs' counsel represented to Defendants' counsel that responses would be served on or before July 15, 2011. (*Id.*) After still not receiving responses by the July 15 deadline, Defendants filed their present Motion to Compel, or, in the Alternative, to Dismiss ([filing 23](#)). Plaintiffs have not responded to the motion and, as of today's date, discovery responses have still not been provided.

On account of Plaintiffs' failure to provide discovery responses in a timely manner and comply with other deadlines, Defendants have sought, and have been granted, two extensions of the deadline to file motions for summary judgment based on qualified immunity. (Filings [17](#), [18](#), [19](#) & [21](#).) Because the responses remain outstanding, Defendants have now filed a third motion requesting an enlargement of time ([filing 25](#)).

It is clear that Plaintiffs have failed to comply with deadlines set in this case and, additionally, have failed to comply with court orders. For instance, the Initial Case Progression Order ([filing 14](#)) set a telephone conference with the court on June 30, 2011. Plaintiffs' counsel was seemingly unavailable and could not be reached for the conference ([filing 22](#)). Plaintiffs' counsel has not contacted the court in an attempt to reschedule the conference. Based on the above, the court concludes that Defendants' motions should be granted. However, at this time, the court will decline to dismiss the action as requested by Defendants and will, instead, order Plaintiffs to respond to the outstanding discovery requests.

Accordingly,

IT IS ORDERED:

1. Defendants' Motion to Compel or, in the Alternative, Dismiss ([filing 23](#)) is granted. Plaintiffs shall provide responses to the outstanding discovery requests by or before August 29, 2011. This action will not be dismissed at this time.
2. Defendants' Motion for Enlargement of Time ([filing 25](#)) is granted. Motions for summary judgment based on qualified immunity shall be filed on or before September 28, 2011.
3. On or before August 29, 2011, Plaintiffs shall file an affidavit, or other appropriate pleading, showing cause why the costs of filing this motion to compel should not be awarded to Defendants and, additionally, why this action

should not be dismissed.

DATED August 15, 2011.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**